

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S

4

SENATE BILL 91
Judiciary II Committee Substitute Adopted 3/4/13
House Committee Substitute Favorable 4/3/13
Fourth Edition Engrossed 4/15/13

Short Title: Prohibit Expunction Inquiry.

(Public)

Sponsors:

Referred to:

February 18, 2013

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE LAW PERTAINING TO ADMINISTRATIVE ACTION THAT MAY BE TAKEN BY AN OCCUPATIONAL LICENSING BOARD AS A RESULT OF EXPUNGED CHARGES OR CONVICTIONS UNDER G.S. 15A-145.4 AND G.S. 15A-145.5; AND TO REQUIRE AN EMPLOYER, EDUCATIONAL INSTITUTION, OR STATE OR LOCAL GOVERNMENT AGENCY TO ADVISE AN APPLICANT THAT THE APPLICANT IS NOT REQUIRED TO DISCLOSE INFORMATION REGARDING AN ARREST, CRIMINAL CHARGE, OR CRIMINAL CONVICTION OF THE APPLICANT THAT HAS BEEN EXPUNGED PRIOR TO REQUESTING DISCLOSURE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-145.4(h) reads as rewritten:

"(h) Any other applicable State or local government agency shall expunge from its records entries made as a result of the conviction ordered expunged under this section. The agency shall also ~~reverse-vacate~~ any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions expunged. A person whose administrative action has been vacated by an occupational licensing board pursuant to an expunction under this section may then reapply for licensure and must satisfy the board's then current education and preliminary licensing requirements in order to obtain licensure. This subsection shall not apply to the Department of Justice for DNA records and samples stored in the State DNA Database and the State DNA Databank."

SECTION 2. G.S. 15A-145.5(f) reads as rewritten:

"(f) Any other applicable State or local government agency shall expunge from its records entries made as a result of the conviction ordered expunged under this section upon receipt from the petitioner of an order entered pursuant to this section. The agency shall also ~~reverse-vacate~~ any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions expunged. A person whose administrative action has been vacated by an occupational licensing board pursuant to an expunction under this section may then reapply for licensure and must satisfy the board's then current education and preliminary licensing requirements in order to obtain licensure. This subsection shall not apply to the Department of Justice for DNA records and samples stored in the State DNA Database and the State DNA Databank or to fingerprint records."

SECTION 3. Article 5 of Chapter 15A of the General Statutes is amended by adding a new section to read:



1 "§ 15A-153. Effect of expunction; prohibited practices by employers, educational
2 institutions, agencies of State and local governments.

3 (a) Purpose. – The purpose of this section is to clear the public record of any entry of
4 any arrest, criminal charge, or criminal conviction that has been expunged so that (i) the person
5 who is entitled to and obtains the expunction may omit reference to the charges or convictions
6 to potential employers and others and (ii) a records check for prior arrests and convictions will
7 not disclose the expunged entries. Nothing in this section shall be construed to prohibit an
8 employer from asking a job applicant about criminal charges or convictions that have not been
9 expunged and are part of the public record.

10 (b) No person as to whom an order of expunction has been entered pursuant to this
11 Article shall be held thereafter under any provision of any laws to be guilty of perjury or
12 otherwise giving a false statement by reason of that person's failure to recite or acknowledge
13 any expunged arrest, apprehension, charge, indictment, information, trial, or conviction in
14 response to any inquiry made of him or her for any purpose other than as provided in
15 subsection (e) of this section.

16 (c) Employer or Educational Institution Inquiry Regarding Disclosure of Expunged
17 Arrest, Criminal Charge, or Conviction. – An employer or educational institution who requests
18 disclosure of information concerning any arrest, criminal charge, or criminal conviction of the
19 applicant shall first advise the applicant that State law allows the applicant to not refer to any
20 arrest, charge, or conviction that has been expunged. An applicant need not, in answer to any
21 question concerning any arrest or criminal charge that has not resulted in a conviction, include
22 a reference to or information concerning arrests, charges, or convictions that have been
23 expunged. This subsection does not apply to State or local law enforcement agencies authorized
24 pursuant to G.S. 15A-151 to obtain confidential information for employment purposes.

25 (d) State or Local Government Agency, Official, and Employee Inquiry Regarding
26 Disclosure of Expunged Arrest, Criminal Charge, or Conviction. – Agencies, officials, and
27 employees of the State and local governments who request disclosure of information
28 concerning any arrest, criminal charge, or criminal conviction of the applicant shall first advise
29 the applicant that State law allows the applicant to not refer to any arrest, charge, or conviction
30 that has been expunged. An applicant need not, in answer to any question concerning any arrest
31 or criminal charge that has not resulted in a conviction, include a reference to or information
32 concerning charges or convictions that have been expunged. Such application shall not be
33 denied solely because of the applicant's refusal or failure to disclose information concerning
34 any arrest, criminal charge, or criminal conviction of the applicant that has been expunged.

35 (e) The provisions of subsection (d) of this section do not apply to any applicant or
36 licensee seeking or holding any certification issued by the North Carolina Criminal Justice
37 Education and Training Standards Commission pursuant to Chapter 17C of the General Statutes
38 or the North Carolina Sheriffs Education and Training Standards Commission pursuant to
39 Chapter 17E of the General Statutes.

40 (1) Convictions expunged pursuant to G.S. 15A-145.4. – Persons pursuing
41 certification under the provisions of Chapter 17C or 17E of the General
42 Statutes shall disclose any and all felony convictions to the certifying
43 Commission regardless of whether or not the felony convictions were
44 expunged pursuant to the provisions of G.S. 15A-145.4.

45 (2) Convictions expunged pursuant to G.S. 15A-145.5. – Persons pursuing
46 certification under the provisions of Chapter 17C or 17E of the General
47 Statutes shall disclose any and all convictions to the certifying Commission
48 regardless of whether or not the convictions were expunged pursuant to the
49 provisions of G.S. 15A-145.5.

50 (f) Penalty for Violation. – Upon investigation by the Commissioner of Labor or the
51 Commissioner's authorized representative, any employer found to be in violation of subsection

1 (c) of this section shall be issued a written warning for a first violation and shall be subject to a
2 civil penalty of up to five hundred dollars (\$500.00) for each additional violation occurring
3 after receipt of the written warning. In determining the amount of any penalty ordered under
4 authority of this section, the Commissioner shall give due consideration to the appropriateness
5 of the penalty with respect to the size of the business of the person being charged, the gravity of
6 the violation, the good faith of the person, and the record of previous violations. The
7 determination of the amount of the penalty by the Commissioner shall be final, unless within 15
8 days after receipt of notice thereof by certified mail with return receipt, by signature
9 confirmation as provided by the U.S. Postal Service, by a designated delivery service
10 authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, or via hand delivery, the
11 person charged with the violation takes exception to the determination in which event the final
12 determination of the penalty shall be made in an administrative proceeding and in a judicial
13 proceeding pursuant to Chapter 150B of the General Statutes, the Administrative Procedure
14 Act. The Commissioner of Labor may adopt, modify, or revoke such rules as are necessary for
15 carrying out the provisions of this subsection.

16 Nothing in this section shall be construed to create a private cause of action against any
17 employer or its agents or employees, any educational institutions or their agents or employees,
18 or any State or local government agencies, officials, or employees."

19 **SECTION 4.** Sections 1 and 2 of this act are effective when this act becomes law.
20 The remainder of this act becomes effective December 1, 2013. G.S. 15A-153(f), as enacted by
21 Section 3 of this act, applies only to violations of G.S. 15A-153 that occur on or after
22 December 1, 2013.